

### **REMARKS**

Claims 36, 40, 42, 45-47, 49, 51, 53, and 55 are amended, claims 43-44 and 50 are canceled, and no claims are added; as a result, claims 36-42, 45-49, and 51-56 are now pending in this application.

No new matter is added by the amendments to claims 36, 40, 42, 45-47, 49, 51, 53, and 55. Support for the amendments to claims 36, 40, 42, 45-47, 49, 51, 53, and 55 is found throughout the specification, including but not necessarily limited to, the specification at paragraphs 0035 through 0053.

#### **§ 101 Rejection of the Claims**

Claims 46-54 were rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Claim 50 is cancelled, so the rejection of claim 50 is moot. The rejection of claims 46-49 and 51-54 is respectfully traversed.

Claims 46-49 and 51-54, at least as now amended, meet the requirements for statutory subject matter under 35 U.S.C. § 101. By way of illustration, independent claim 46, as now amended, recites:

**storing in a database maintained by the network-based transaction facility** a listing of a plurality of items being offered for sale by a seller in a virtual store of the seller, wherein the items offered for sale are associated with a plurality of transaction types including an auction price-setting process and a fixed price-setting process, wherein the database includes **a database engine server coupled to at least one engine server database including an items table**, the items table defining a plurality of fields for each of the plurality of item being offered for sale, including a sale type field for each given item being offered for sale, wherein the sale type field records the price setting process for each of the plurality of item being offered for sale;

**accepting at the network-based transaction facility a first request from a client machine accessing the transaction facility over a network: . . .**

communicating across the network to the client machine the generated commingled list for display at the client machine;

accepting at the network-based transaction facility a second request from the client machine. (Emphasis added).

Independent claim 46 includes a network-based transaction facility that includes a database maintained by the network-based transaction facility, a database engine server coupled to at least one engine server database including an items table. The network-based transaction facility is operable to receive at the network-based transaction facility requests from a client machine made over a network, and to communicate across the network to the client machine.

Thus, independent claim 46 is tied to a network-based transaction facility (an apparatus) which is positively recited in the claim. Therefore, independent claim 46, and claims 47-49 and 51-54 that depend from independent claim 46, all meet the requirements for statutory subject matter under 35 U.S.C. § 101.

Reconsideration and withdrawal of the 35 U.S.C. § 101 rejection, and allowance of claims 46-49 and 51-54, is respectfully requested.

### § 103 Rejection of the Claims

#### Claims 36-47 and 49-56.

Claims 35-47, 49-51, and 55 were rejected under 35 U.S.C. § 103(a) as being obvious over Esposito et al. (U.S. Patent No. 6,587,838, hereinafter; “Esposito”) in view of Kopelman et al. (U.S. Patent No. 7,373,317, hereinafter; “Kopelman”) and Offutt Jr. et al. (U.S. Publication No. 2002/0184059, hereinafter; “Offutt”).

Claim 35 is cancelled, so the listing of claim 35 in the statement of the rejection is assumed to be inadvertent, or in the alternative, is moot. Claims 43-44 and 50 are cancelled with this response, so the rejection of claims 43-44 and 50 is also moot.

In addition, the statement of the rejection fails to include a listing of claims 52-54 and 56. However, the Final Office Action discusses these claims under the same statement of the rejection, that is, the rejection under item number “2.” starting on page 3 in the Final Office Action. Therefore, it is considered that claims 52-54 and 56 stand rejected on the same basis as claims 36-42, 45-47, 49, 51, and 55 as included in the above-quoted statement of the rejection from the Final Office action.

The rejection of claims 36-42, 45-47, 49, and 51-56 under 35 U.S.C. § 103(a) is respectfully traversed.

Claims 36-42, 45-47, 49, and 51-56 are not obvious in view of the proposed combination of Esposito, Kopelman, and Offutt<sup>11</sup> because the proposed combination of Esposito, Kopelman, and Offutt fails to disclose or suggest all of the subject matter included in any given one of claims 36-42, 45-47, 49, and 51-56. By way of illustration, independent claim 36, as now amended, recites:

the at least one back-end server operable to search a database maintained by the network-based transaction facility, wherein the network-based transaction facility includes a database engine server coupled to at least one engine server database **including a user table, the engine server database includes an items table that is linked to the user table and that includes a sellers items table and a bidders items table**, wherein the items table includes a number of fields for each of a plurality of records that describe an item offered for sale via the network-based transaction facility, **wherein at least one of the number of fields includes a sale type field operable to record a type of item that indicates a price-setting process by which a price for the item relevant to the record associated with the item being offered for sale is established**, the database including at least one item offered for sale using an auction-type price setting process and at least one item offered for sale using a fixed price setting process. (Emphasis added).

In addition, independent claim 36, as now amended, further recites:

wherein the commingled list includes items being offered for sale by any combination of an auction-type price setting process and a fixed price setting process, and wherein if the request includes a specified transaction type, **the at least one back-end server is operable to filter the comingled list to include only items offered for sale that have a type of item in the sale type field for the item offered for sale that matches the specified transaction type**. (Emphasis added).

Thus, independent claim 36 includes a database maintained by the network-based transaction facility that includes, “a user table[and] an items table that is linked to the user table and that includes a sellers items table and a bidders items table . . . wherein at least one of the

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<sup>11</sup> Applicants to not admit or agree that any combination or combinations of Esposito, Kopelman, and Offutt are possible

number of fields includes a sale type field operable to record a type of item that indicates a price-setting process by which a price for the item relevant to the record associated with the item being offered for sale is established.”

In contrast to independent claim 36, Esposito concerns:<sup>2</sup>

A system for providing real-time notification of purchaser requirements in a heterogeneous network environment is provided. . . . Select embodiments include a plurality of wireless terminals in communication with the wireless network to receive real-time notification of a purchaser's requirements. At least one vendor computer is part of the system. The vendor computer has one or more databases for storing information about products and services in a product database, and a customer database, for storing information about customers.

However, there is no disclosure or suggestion in Esposito of an engine server database that includes an items table that includes a sales type field operable to record a type of item that indicates a price-setting process by which a price for the item relevant to the record associated with the item being offered for sale is established, as included in independent claim 36.

The Final Office Action admits as much, wherein the Final Office Action states, “Esposito does not explicitly disclose an auction price-setting process.”<sup>3</sup> In fact, Esposito fails to disclose or suggest any type of field associated with information about products that relates to a price setting process for the products and services discussed in Esposito.

As such, Esposito cannot disclose or suggest, “. . . the at least one back-end server is operable to filter the comingled list to include only items offered for sale that have a type of item in the sale type field for the item offered for sale that matches the specified transaction type,” as included in independent claim 36.

In addition, the Final Office Action refers to Kopelman as disclosing “an auction price-setting process (Col. 1, ll. 50-51).”<sup>4</sup> The cited portion of Kopelman states:<sup>5</sup>

Auctions provide one type of marketplace for selling goods. Used goods sold at auction are sold at prices set by interested buyers.

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<sup>2</sup> See Esposito at the Abstract.

<sup>3</sup> See the Final Office Action at page 4, at the first sentence following the bulleted items at the top of the page.

<sup>4</sup> See the Final Office Action at page 4, second paragraph after the bulleted items.

<sup>5</sup> See Kopelman at column 1, lines 49-51.

These general statements in the cited portions of Kopelman concerning auctions fail, by themselves, to remedy the deficiencies of Esposito regarding a disclosure or suggestion of the subject matter included in independent claim 36 as quoted above and as missing from Esposito.

The further reference in the Final Office Action to Offutt related to “virtual stores” in paragraph 0008 of Offut also fails to remedy the deficiencies of Esposito and Kopelman. The addition of Offutt also fails to disclose or suggest the subject matter included in independent claim 36, as quoted above, and as is missing from both Esposito and Kopelman.

Thus, the proposed combination of Esposito, Kopelman, and Offutt fails to disclose or suggest all of the subject matter included in independent claim 36, at least as independent claim 36 is now amended, and so independent claim 36 is not obvious in view of the proposed combination of Esposito, Kopelman and Offutt.

For reasons analogous to those stated above with respect to independent claim 36, independent claims 46 and 55, at least as now amended, are not obvious in view of the proposed combination of Esposito, Kopelman, and Offutt.

Claims 37-42, 45, 47, 49, and 51-56 depend from one of independent claims 36 and 46, and so include all of the subject matter included in the independent claim from which they depend, and more. For at least the reasons stated above with respect to independent claims 36 and 46, any proposed combination of Esposito, Kopelman, and Offutt fails to disclose or suggest the subject matter included in claims 37-42, 45, 47, 49, and 51-56, and so claims 37-42, 45, 47, 49, and 51-56 are not obvious in view of the proposed combination of Esposito, Kopelman, and Offutt.

Reconsideration and withdrawal of the 35 U.S.C. § 103(a) rejection, and allowance of claims 36-42, 45-47, 49, and 51-56, is respectfully requested.

Claim 48.

Claim 48 was rejected under 35 U.S.C. § 103(a) as being obvious over Esposito in view of Kopelman and Offutt, and further in view of O’Neil et al. (U.S. Patent No. 5,987,440, hereinafter; “O’Neil”).

Claim 48 depends from independent claim 46, and so includes all of the subject matter included in independent claim 46, and more. For at least the reasons stated above with respect to independent claim 46, any proposed combination of Esposito, Kopelman, and Offutt fails to disclose or suggest all of the subject matter included in claim 48. The addition of O'Neill fails to remedy these deficiencies in the proposed combination of Esposito, Kopelman, and Offutt. Thus, the proposed combination of Esposito, Kopelman, Offutt, and O'Neill<sup>6</sup> fails to disclose or suggest all of the subject matter included in claim 48, and so claim 48 is not obvious in view of the proposed combination of Esposito, Kopelman, Offutt, and O'Neill.

Reconsideration and withdrawal of the 35 U.S.C. § 103(a) rejection, and allowance of claim 48, is respectfully requested.

#### Reservation of Rights

In the interest of clarity and brevity, Applicants may not have addressed every assertion made in the Final Office Action. Applicants' silence regarding any such assertion does not constitute any admission or acquiescence. Applicants reserve all rights not exercised in connection with this response, such as the right to challenge or rebut any tacit or explicit characterization of any reference or of any of the present claims, the right to challenge or rebut any asserted factual or legal basis of any of the rejections, the right to swear behind any cited reference such as provided under 37 C.F.R. § 1.131 or otherwise, or the right to assert co-ownership of any cited reference. Applicants do not admit that any of the cited references or any other references of record are relevant to the present claims, or that they constitute prior art. To the extent that any rejection or assertion is based upon the Examiner's personal knowledge, rather than any objective evidence of record as manifested by a cited prior art reference, Applicants timely object to such reliance on Official Notice, and reserve all rights to request that the Examiner provide a reference or affidavit in support of such assertion, as required by MPEP § 2144.03. Applicants reserve all rights to pursue any cancelled claims in a subsequent patent application claiming the benefit of priority of the present patent application, and to request rejoinder of any withdrawn claim, as required by MPEP § 821.04.

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<sup>6</sup> Applicants do not admit or agree that any proposed combination or combinations of Esposito, Kopelman, Offutt, and O'Neill are possible.

**CONCLUSION**

Applicants respectfully submit that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's representative at (612) 371-2132 to facilitate prosecution of this application.

If necessary, please charge any additional fees or deficiencies, or credit any overpayments to Deposit Account No. 19-0743.

Respectfully submitted,

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 16th day of July, 2009.

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